

# THE C A S E

OF

## Sir Cæsar Wood, alias Cranmer, Kt. Appellant,

AGAINST

### CHARLES Duke of Southampton, Respondent, from a Decree of the late Lord Jefferies in Chancery, between the said CHARLES Duke of Southampton, Complainant, and the said Appellant, Defendant.

*Humbly Presented to the Consideration of the Right Honorable the Lords Spiritual and Temporal in Parliament Assembled.*

**S**IR Henry Wood being Owner of a Real Estate of about 3500 *l. per annum*, and a Personal Estate of good value, having Issue Mary Wood, his only Child, Anno 1671. An Overture was made to him by direction of his late Majesty King Charles II. for the Marriage of his said Daughter to the now Respondent, then Earl of Southampton: And it was offered by His Majesty, in behalf of the now Respondent, to settle 2000 *l. per annum* on the Respondent, and the said Mary, for her Joynture, with Remainder to the Issue of the Marriage; Provided the said Sir Henry Wood would settle his Real Estate aforelaid, from and after his own death, upon the Respondent and the said Mary, and their Issue. Which Proposals Sir Henry Wood approved, as to the Settlement to be made on either side. But his Daughter being then but seven years of Age, and the Respondent but eleven years old; Sir Henry Wood would not consent that the Marriage should be had till after his Daughter should have attained her Age of sixteen years, and then to be at her Election, whether she should Marry the Respondent or not. And those that Treated for the Respondent, insinuating it might be to his disadvantage, if Mary should refuse to Marry him after her Age of sixteen years, (in regard he must forgo all opportunities of his Preferment, in Marriage, in the mean time,) Sir Henry Wood thereupon, and rather than he would consent to his Daughters Marriage before her Age of sixteen years, agreed that his Estate should stand charged with 20000 *l.* for the benefit of the Respondent, as a Recompence to him, in case Mary should refuse to Marry him after her Age of sixteen years.

And thereupon it was agreed, that the intended Marriage should not be had until after the said Maries Age of sixteen years; and then to be at her Election to Marry the Earl or not, with a penalty of 20000 *l.* to be forfeited to the Respondent, in case she then refused to Marry him.

Sir Henry Wood having made this Agreement on the 23. of May 1671. being but two days before his death, made a Settlement of his Estate accordingly, which he did in confidence that the said 2000 *l. per annum* would have been settled according to the said Agreement; and the same is mentioned to be in consideration of the settling of the said 2000 *l. per annum*, according to His Majesties offer. And by this Settlement his whole Real Estate, of the value of 3500 *l. per annum*, was conveyed to Trustees, upon Trust that they should receive the profits thereof till his Daughters Age of seventeen, or Marriage. And if after her Age of sixteen, and before seventeen, she should refuse to Marry the Respondent, then to pay the Respondent the said 20000 *l.* as a Recompence. But if the Marriage should take effect after her Age of sixteen, and they should have Issue Male, then the Trustees to stand seized in Trust for the Respondent, and the said Mary for their lives, with remainder to their Issue, in such manner as is therein limited.

But if the Marriage should not take effect after her Age of sixteen years, or in default of Issue of the Marriage; Then the Trustees were to stand seized to such uses as the said Sir Henry Wood should declare by his last Will.

And at the same time Sir Henry Wood made his Will, (bearing date the day after the Settlement) whereby he recites and confirms the Settlement. And in case the Marriage should not take effect according to the purport of the Settlement; Then he Devised his said Real Estate to his said Daughter for her life, with Remainder to her Issue by such other person as she should Marry. And for default of such Issue, he Intails the same on several of his own Relations, and particularly on the now Appellant, being his Nephew, for life, with Remainder to Henry his eldest Son in Tail Male, and to Charles his second Son in Tail Male, (the Appellant and his Son, and their Issue, taking on them the name of Wood,) with other Remainders over.

And he Devised the Rents and Profits of his Real Estate above what is appointed for his Daughters maintainance, (which was to be 450 *l. per annum*, till her Age of twelve years, afterwards 550 *l. per annum*, till her Age of seventeen,) and also all his Leases, and Personal Estate, to be laid out by his Trustees, and his Executors therein named, in purchases of Lands, which he Willed should be settled to the same uses as his Real Estate was to go. And Devised the Tuition, and Guardianship of his Daughter, and her disposal in Marriage, (with such consent as in his Will) to the Lady Chester, the Appellants Mother. And if she dyed, then to several other persons by name, of his own Relations successively. And appointed the Lady Chester, and Dr. Wood his Brother, his Executors in Trust for his Daughter, until such her Marriage, or Age of twenty one years, and then his Daughter to be Executrix. And the next day after making his Will Sir Henry Wood dyed, his said Daughter being then only of the Age of seven years.

The Lady Chester proved the Will, and took upon her the Guardianship, and Tuition of the said Mary Wood, intending to have continued the same until her Age of sixteen years, that so Mary might have had her free Election to Marry the Respondent or not, according to her Fathers intention expressed in his Settlement and Will: But within a few weeks after Sir Henry Woods death, she was taken from the Lady Chester her Guardian, against her consent, by, or by the procurement of, some persons nearly related to the Respondent. And though the Lady Chester made great application for the Restoring of her, yet the persons that detained her, being too great for her to contend withal, she could not prevail to have her restored. But on the contrary, about seven weeks after Sir Henry Woods death, she was privately Married to the Respondent, though she was then but about seven years old, and the Respondent but about eleven years of Age, and this without the Consent or privity of her Guardian, the Lady Chester, or any of the Trustees appointed by her Fathers Will, or the Joynture of 2000 *l. per annum* settled. And the better to colour this extraordinary proceeding, a Nuncupative Codicil was set up, and endeavoured to be proved in the Prerogative Court, whereby it was pretended Sir Henry Wood, contrary to his Will in writing, (which was made but the Evening before his death) had bequeathed the Guardianship of his Daughter to her Grace the Duchess of Cleveland. But this project was spoiled by the Lord Chief Justice Hales, who upon examination of the Matter, Prohibited the proving of the Codicil.

However, the Respondent, upon this Marriage (such as it was) Exhibited his Bill in the High Court of Chancery, against the Executors of Sir Henry Woods Will, suggesting that by this his Marriage, their Executorship was determined, and that his Wife was become Executrix, and the Respondent, in her Right, thereby intituled to the Personal Estate, and the Rents and Profits of the Real Estate, and upon this account opposed the laying out of the same in Purchases of Lands, as Sir Henry Woods Settlement and Will had directed. And Mary (being still detained from her Guardian) at her Age of twelve years, was again Married to the Respondent, but without the consent, or so much as the knowledge, or privity of her Guardian, or any of her Trustees, and the 2000 *l. per annum* not yet settled. And upon this second Marriage, a new Bill was Exhibited against the Executors and this Appellant, to the same effect with the former, but nothing was done thereupon.

And on November 15. 1680. before any Settlement of the 2000 *l. per annum*, and before any Marriage, after her Age of sixteen years, Mary dyed, and without Issue, by reason whereof all the uses in the Settlement and Will, that were to arise on the Marriage with the Respondent became null and void. And the Rents and Profits of the Real Estate, above what was appointed for maintainance, and also the Personal Estate ought to have been laid out in Purchases of Lands, to be settled according to Sir Henry Woods Will, whereby the same would have come to the Appellant and his Sons, (in Remainder after the death of the Bishop) according to the express direction of the Will. And in the lifetime time of Mary, about 2000 *l.* thereof was accordingly laid out in a Purchase of Lands.

Nevertheless, The now Respondent having taken out Administration to Mary, and also Letters of Administration to Sir Henry Wood, with his Will annexed (though nothing of Kin to him) in the year 1683. Exhibited a new Bill against the Executors of Sir Henry Woods Will. And the Lady Chester (one of the Executors) dying, he revived the same against the Appellant, as Executor to the Lady Chester. And the effect of this Bill was to have the Personal Estate of Sir Henry Wood, and the Rents and Profits of the Real Estate to the time of Maries death, accounted for, and delivered to him the Respondent. And on hearing the Cause on the 27. day of October 1685. before the late Lord Chancellor Jefferies, his Lordship was pleased to declare, That it plainly appeared to be the intention of Sir Henry Wood, that the said Marriage should take effect before Maries Age of sixteen years (though both the Settlement and Will appoints it to be between sixteen and seventeen) And that by the Respondents Marriage (which was in such manner as aforelaid, and not otherwise,) the Executorship of the Lady Chester, and the Bishop determined. And that by the Marriage (though no Settlement was made of the 2000 *l. per annum* on the Respondents part, or any Settlement at all on his part,) the Respondent was become intituled to, and ought to have an account of the whole Personal Estate that Sir Henry Wood left at his death, and the Rents and Profits of the Real Estate to the time of Maries death, and did Decree the same accordingly.

So that by this Decree, the whole Personal Estate of Sir Henry Wood, and also all the Rents and Profits of his Real Estate, from the time of his death, to the time of the death of Mary, (which is about nine years) is to go to the Respondent: Whereas by the Will of Sir Henry Wood, the same ought to be laid out in Purchases of Lands, to be settled according to Sir Henry Woods Will, Whereby the same would come to the Appellant, and his Sons, as aforelaid. And in the Prosecution of this Decree, the Appellant, and other Defendants, are not only charged for the Personal Estate, and Profits that was remaining at Maries death, but also with the 2000 *l.* that was laid out in Lands, as if the same had yet continued Personal Estate.

Now the Appellant humbly conceives, and is advised that this Decree is Erroneous. First, Because the Decree is founded on a false Proposition, viz. That it was Sir Henry Woods intention, that the Marriage with the Respondent should take effect before Maries Age of sixteen. Whereas both by the Settlement and Will, it is appointed to be between sixteen and seventeen. Secondly, Because the Estate in question is Decreed to the Respondent, contrary the Settlement and Will of Sir Henry Wood, and that notwithstanding the 2000 *l. per annum* (which was the consideration of Sir Henry Woods Settlement) was never settled, which is a strange sort of Equity. Thirdly, If this Decree should stand, the Respondent will profit by the Wrongs that have been done, which by a known Maxim no man is to do. And fourthly, It will be of dangerous Consequence, and may give Countenance to the Ravishment of Children from their Guardians, and Marrying them without any Settlement or Provision for them, though never so solemnly agreed.

Wherefore, And for many other Errors in the Decree appearing, the Appellant humbly prays that the same may be Reversed.

By Dr. Cren,  
then Bishop of  
Oxford, late  
Lady Vilar's  
House in  
Kingstreet,  
Westminster.

By his Guard-  
ian Sir John  
Trevor, late  
Master of the  
Rolls, as Ad-  
ministrators,  
during the Mi-  
nority of the  
Respondent.

(P. 2.) By  
taking away  
of Mary, and  
Marrying of  
her under Age  
contrary to  
her Fathers  
Will and with-  
out a Settle-  
ment.





Le 26<sup>th</sup> Jan  
1841  
Wm A. Palmer